

BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KATHERINE G. EMBLEY)	
Claimant)	
VS.)	
)	
SUNFLOWER MATERIALS)	Docket Nos. 154,217
Respondent)	& 157,147
AND)	
)	
NATIONAL AMERICAN INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On August 8, 1996, the Application of the Kansas Workers Compensation Fund for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Alvin E. Witwer on February 6, 1996, came on for oral argument.

APPEARANCES

Claimant appeared not, having settled this matter with respondent as to all issues on August 7, 1992. Respondent and its insurance carrier appeared through their attorney, Karen D. Pendland of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by and through its attorney, W.Frederick Zimmerman of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What, if any, is the liability of the Kansas Workers Compensation Fund?
- (2) Whether the Kansas Workers Compensation Fund shall be liable for any, all, or a portion of the amount respondent has paid towards medical per the terms of the settlement award since the award was entered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat same herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge, in assessing 100 percent of the liability in the above matter to the Kansas Workers Compensation Fund, accurately evaluated the evidence set forth in the record in finding that claimant, a handicapped employee, would not have suffered injurers on November 14, 1990 and February 8, 1991, but for her preexisting impairment.

The fact that claimant had suffered prior injuries to the same areas of the body and had been provided specific restrictions after undergoing medical treatment and missing work for periods of time is sufficient to convince the Appeals Board that the assessment of 100 percent liability to the Kansas Workers Compensation Fund is supported by a preponderance of the credible evidence.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer dated February 6, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: W. Frederick Zimmerman, Kansas City, KS
Karen D. Pendland, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director